

In the Senate of the United States,

June 26, 2008.

Resolved, That the bill from the House of Representatives (H.R. 802) entitled “An Act to amend the Act to Prevent Pollution from Ships to implement MARPOL Annex VI.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Maritime Pollution Pre-*
3 *vention Act of 2008”.*

4 ***SEC. 2. REFERENCES.***

5 *Wherever in this Act an amendment or repeal is ex-*
6 *pressed in terms of an amendment to or a repeal of a section*
7 *or other provision, the reference shall be considered to be*
8 *made to a section or other provision of the Act to Prevent*
9 *Pollution from Ships (33 U.S.C. 1901 et seq.).*

10 ***SEC. 3. DEFINITIONS.***

11 *Section 2(a) (33 U.S.C. 1901(a)) is amended—*

1 (1) by redesignating the paragraphs (1) through
2 (12) as paragraphs (2) through (13), respectively;

3 (2) by inserting before paragraph (2) (as so re-
4 designated) the following:

5 “(1) ‘Administrator’ means the Administrator of
6 the Environmental Protection Agency;”;

7 (3) in paragraph (5) (as so redesignated) by
8 striking “and V” and inserting “V, and VI”;

9 (4) in paragraph (6) (as so redesignated) by
10 striking “‘discharge’ and ‘garbage’ and ‘harmful sub-
11 stance’ and ‘incident’” and inserting “‘discharge’,
12 ‘emission’, ‘garbage’, ‘harmful substance’, and ‘inci-
13 dent’”; and

14 (5) by redesignating paragraphs (7) through (13)
15 (as redesignated) as paragraphs (8) through (14), re-
16 spectively, and inserting after paragraph (6) (as re-
17 designated) the following:

18 “(7) ‘navigable waters’ includes the territorial
19 sea of the United States (as defined in Presidential
20 Proclamation 5928 of December 27, 1988) and the in-
21 ternal waters of the United States;”.

22 **SEC. 4. APPLICABILITY.**

23 Section 3 (33 U.S.C. 1902) is amended—

24 (1) in subsection (a)—

1 (A) by striking “and” at the end of para-
2 graph (3);

3 (B) by striking the period at the end of
4 paragraph (4) and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(5) with respect to Annex VI to the Convention,
7 and other than with respect to a ship referred to in
8 paragraph (1)—

9 “(A) to a ship that is in a port, shipyard,
10 offshore terminal, or the internal waters of the
11 United States;

12 “(B) to a ship that is bound for, or depart-
13 ing from, a port, shipyard, offshore terminal, or
14 the internal waters of the United States, and is
15 in—

16 “(i) the navigable waters or the exclu-
17 sive economic zone of the United States;

18 “(ii) an emission control area des-
19 ignated pursuant to section 4; or

20 “(iii) any other area that the Adminis-
21 trator, in consultation with the Secretary
22 and each State in which any part of the
23 area is located, has designated by order as
24 being an area from which emissions from
25 ships are of concern with respect to protec-

1 *tion of public health, welfare, or the envi-*
2 *ronment;*

3 *“(C) to a ship that is entitled to fly the flag*
4 *of, or operating under the authority of, a party*
5 *to Annex VI, and is in—*

6 *“(i) the navigable waters or the exclu-*
7 *sive economic zone of the United States;*

8 *“(ii) an emission control area des-*
9 *ignated under section 4; or*

10 *“(iii) any other area that the Adminis-*
11 *trator, in consultation with the Secretary*
12 *and each State in which any part of the*
13 *area is located, has designated by order as*
14 *being an area from which emissions from*
15 *ships are of concern with respect to protec-*
16 *tion of public health, welfare, or the envi-*
17 *ronment; and*

18 *“(D) to any other ship, to the extent that,*
19 *and in the same manner as, such ship may be*
20 *boarded by the Secretary to implement or enforce*
21 *any other law of the United States or Annex I,*
22 *II, or V of the Convention, and is in—*

23 *“(i) the exclusive economic zone of the*
24 *United States;*

1 “(ii) the navigable waters of the
2 United States;

3 “(iii) an emission control area des-
4 ignated under section 4; or

5 “(iv) any other area that the Adminis-
6 trator, in consultation with the Secretary
7 and each State in which any part of the
8 area is located, has designated by order as
9 being an area from which emissions from
10 ships are of concern with respect to protec-
11 tion of public health, welfare, or the envi-
12 ronment.”;

13 (2) in subsection (b)—

14 (A) in paragraph (1) by striking “para-
15 graph (2),” and inserting “paragraphs (2) and
16 (3),”; and

17 (B) by adding at the end the following:

18 “(3) With respect to Annex VI the Administrator, or
19 the Secretary, as relevant to their authorities pursuant to
20 this Act, may determine that some or all of the requirements
21 under this Act shall apply to one or more classes of public
22 vessels, except that such a determination by the Adminis-
23 trator shall have no effect unless the head of the Department
24 or agency under which the vessels operate concurs in the

1 *determination. This paragraph does not apply during time*
 2 *of war or during a declared national emergency.”;*

3 *(3) by redesignating subsections (c) through (g)*
 4 *as subsections (d) through (h), respectively, and in-*
 5 *serting after subsection (b) the following:*

6 *“(c) APPLICATION TO OTHER PERSONS.—This Act*
 7 *shall apply to all persons to the extent necessary to ensure*
 8 *compliance with Annex VI to the Convention.”;*

9 *(4) in subsection (e), as redesignated—*

10 *(A) by inserting “or the Administrator, con-*
 11 *sistent with section 4 of this Act,” after “Sec-*
 12 *retary”;*

13 *(B) by striking “of section (3),” and insert-*
 14 *ing “of this section,”; and*

15 *(C) by striking “Protocol, including regula-*
 16 *tions conforming to and giving effect to the re-*
 17 *quirements of Annex V” and inserting “Protocol*
 18 *(or the applicable Annex), including regulations*
 19 *conforming to and giving effect to the require-*
 20 *ments of Annex V and Annex VI”;* and

21 *(5) by adding at the end thereof the following:*

22 *“(i) SAVINGS CLAUSE.—Nothing in this section shall*
 23 *be construed to restrict in a manner inconsistent with inter-*
 24 *national law navigational rights and freedoms as defined*

1 *by United States law, treaty, convention, or customary*
2 *international law.”.*

3 **SEC. 5. ADMINISTRATION AND ENFORCEMENT.**

4 *Section 4 (33 U.S.C. 1903) is amended—*

5 *(1) by redesignating subsections (b) and (c) as*
6 *subsections (c) and (d), respectively, and inserting*
7 *after subsection (a) the following:*

8 *“(b) DUTY OF THE ADMINISTRATOR.—In addition to*
9 *other duties specified in this Act, the Administrator and*
10 *the Secretary, respectively, shall have the following duties*
11 *and authorities:*

12 *“(1) The Administrator shall, and no other per-*
13 *son may, issue Engine International Air Pollution*
14 *Prevention certificates in accordance with Annex VI*
15 *and the International Maritime Organization’s Tech-*
16 *nicol Code on Control of Emissions of Nitrogen Ox-*
17 *ides from Marine Diesel Engines, on behalf of the*
18 *United States for a vessel of the United States as that*
19 *term is defined in section 116 of title 46, United*
20 *States Code. The issuance of Engine International*
21 *Air Pollution Prevention certificates shall be con-*
22 *sistent with any applicable requirements of the Clean*
23 *Air Act or regulations prescribed under that Act.*

1 “(2) *The Administrator shall have authority to*
 2 *administer regulations 12, 13, 14, 15, 16, 17, 18, and*
 3 *19 of Annex VI to the Convention.*

4 “(3) *The Administrator shall, only as specified*
 5 *in section 8(f), have authority to enforce Annex VI of*
 6 *the Convention.*”;

7 (2) *in subsection (c), as redesignated, by redesign-*
 8 *ating paragraph (2) as paragraph (4), and insert-*
 9 *ing after paragraph (1) the following:*

10 “(2) *In addition to the authority the Secretary has to*
 11 *prescribe regulations under this Act, the Administrator*
 12 *shall also prescribe any necessary or desired regulations to*
 13 *carry out the provisions of regulations 12, 13, 14, 15, 16,*
 14 *17, 18, and 19 of Annex VI to the Convention.*

15 “(3) *In prescribing any regulations under this section,*
 16 *the Secretary and the Administrator shall consult with each*
 17 *other, and with respect to regulation 19, with the Secretary*
 18 *of the Interior.*”; and

19 (3) *by adding at the end of subsection (c), as re-*
 20 *designated, the following:*

21 “(5) *No standard issued by any person or Federal au-*
 22 *thority, with respect to emissions from tank vessels subject*
 23 *to regulation 15 of Annex VI to the Convention, shall be*
 24 *effective until 6 months after the required notification to*

1 *the International Maritime Organization by the Sec-*
 2 *retary.”.*

3 **SEC. 6. CERTIFICATES.**

4 *Section 5 (33 U.S.C. 1904) is amended—*

5 *(1) in subsection (a) by striking “The Secretary”*
 6 *and inserting “Except as provided in section 4(b)(1),*
 7 *the Secretary”;*

8 *(2) in subsection (b) by striking “Secretary*
 9 *under the authority of the MARPOL protocol.” and*
 10 *inserting “Secretary or the Administrator under the*
 11 *authority of this Act.”; and*

12 *(3) in subsection (e) by striking “environment.”*
 13 *and inserting “environment or the public health and*
 14 *welfare.”.*

15 **SEC. 7. RECEPTION FACILITIES.**

16 *Section 6 (33 U.S.C. 1905) is amended—*

17 *(1) in subsection (a) by adding at the end the*
 18 *following:*

19 *“(3) The Secretary and the Administrator, after con-*
 20 *sulting with appropriate Federal agencies, shall jointly pre-*
 21 *scribe regulations setting criteria for determining the ade-*
 22 *quacy of reception facilities for receiving ozone depleting*
 23 *substances, equipment containing such substances, and ex-*
 24 *haust gas cleaning residues at a port or terminal, and stat-*
 25 *ing any additional measures and requirements as are ap-*

1 *proprioate to ensure such adequacy. Persons in charge of*
 2 *ports and terminals shall provide reception facilities, or en-*
 3 *sure that reception facilities are available, in accordance*
 4 *with those regulations. The Secretary and the Adminis-*
 5 *trator may jointly prescribe regulations to certify, and may*
 6 *issue certificates to the effect, that a port's or terminal's*
 7 *facilities for receiving ozone depleting substances, equip-*
 8 *ment containing such substances, and exhaust gas cleaning*
 9 *residues from ships are adequate.”;*

10 (2) *in subsection (b) by inserting “or the Admin-*
 11 *istrator” after “Secretary”;*

12 (3) *in subsection (e) by striking paragraph (2)*
 13 *and inserting the following:*

14 “(2) *The Secretary may deny the entry of a ship to*
 15 *a port or terminal required by the MARPOL Protocol, this*
 16 *Act, or regulations prescribed under this section relating to*
 17 *the provision of adequate reception facilities for garbage,*
 18 *ozone depleting substances, equipment containing those sub-*
 19 *stances, or exhaust gas cleaning residues, if the port or ter-*
 20 *minal is not in compliance with the MARPOL Protocol,*
 21 *this Act, or those regulations.”;*

22 (4) *in subsection (f)(1) by striking “Secretary*
 23 *is” and inserting “Secretary and the Administrator*
 24 *are”;* and

25 (5) *in subsection (f)(2) by striking “(A)”.*

1 **SEC. 8. INSPECTIONS.**

2 *Section 8(f) (33 U.S.C. 1907(f)) is amended to read*
3 *as follows:*

4 “(f)(1) *The Secretary may inspect a ship to which this*
5 *Act applies as provided under section 3(a)(5), to verify*
6 *whether the ship is in compliance with Annex VI to the*
7 *Convention and this Act.*

8 “(2) *If an inspection under this subsection or any*
9 *other information indicates that a violation has occurred,*
10 *the Secretary, or the Administrator in a matter referred*
11 *by the Secretary, may undertake enforcement action under*
12 *this section.*

13 “(3) *Notwithstanding subsection (b) and paragraph*
14 *(2) of this subsection, the Administrator shall have all of*
15 *the authorities of the Secretary, as specified in subsection*
16 *(b) of this section, for the purposes of enforcing regulations*
17 *17 and 18 of Annex VI to the Convention to the extent that*
18 *shoreside violations are the subject of the action and in any*
19 *other matter referred to the Administrator by the Sec-*
20 *retary.”.*

21 **SEC. 9. AMENDMENTS TO THE PROTOCOL.**

22 *Section 10(b) (33 U.S.C. 1909(b)) is amended—*

23 *(1) by striking “Annex I, II, or V” and inserting*
24 *“Annex I, II, V, or VI”; and*

25 *(2) by inserting “or the Administrator as pro-*
26 *vided for in this Act,” after “Secretary.”.*

1 **SEC. 10. PENALTIES.**

2 *Section 9 (33 U.S.C. 1908) is amended—*

3 *(1) by striking “Protocol,” each place it appears*
4 *and inserting “Protocol,”;*

5 *(2) in subsection (b)—*

6 *(A) by inserting “or the Administrator as*
7 *provided for in this Act,” after “Secretary,” the*
8 *first place it appears;*

9 *(B) in paragraph (2), by inserting “, or the*
10 *Administrator as provided for in this Act,” after*
11 *“Secretary”; and*

12 *(C) in the matter after paragraph (2)—*

13 *(i) by inserting “or the Administrator*
14 *as provided for in this Act” after “Sec-*
15 *retary,” the first place it appears; and*

16 *(ii) by inserting “, or the Adminis-*
17 *trator as provided for in this Act,” after*
18 *“Secretary” the second and third places it*
19 *appears;*

20 *(3) in subsection (c), by inserting “, or the Ad-*
21 *ministrator as provided for in this Act,” after “Sec-*
22 *retary” each place it appears; and*

23 *(4) in subsection (f), by inserting “or the Admin-*
24 *istrator as provided for in this Act” after “Sec-*
25 *retary,” the first place appears.*

1 **SEC. 11. EFFECT ON OTHER LAWS.**

2 *Section 15 (33 U.S.C. 1911) is amended to read as*
3 *follows:*

4 **“SEC. 15. EFFECT ON OTHER LAWS.**

5 *“Authorities, requirements, and remedies of this Act*
6 *supplement and neither amend nor repeal any other au-*
7 *thorities, requirements, or remedies conferred by any other*
8 *provision of law. Nothing in this Act shall limit, deny,*
9 *amend, modify, or repeal any other authority, requirement,*
10 *or remedy available to the United States or any other per-*
11 *son, except as expressly provided in this Act.”.*

12 **SEC. 12. LEGAL ACTIONS.**

13 *Section 11 (33 U.S.C. 1910) is amended—*

14 *(1) by redesignating paragraph (3) of subsection*
15 *(a) as paragraph (4), and inserting after paragraph*
16 *(2) the following:*

17 *“(3) against the Administrator where there is al-*
18 *leged a failure of the Administrator to perform any*
19 *act or duty under this Act which is not discretionary;*
20 *or”;*

21 *(2) by striking “concerned,” in subsection (b)(1)*
22 *and inserting “concerned or the Administrator,”; and*

- 1 (3) *by inserting “or the Administrator” after*
- 2 *“Secretary” in subsection (b)(2).*

Attest:

Secretary.

110TH CONGRESS
2D SESSION

H. R. 802

AMENDMENT